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November 10, 1995

Delmar Karlen, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 17th Floor  
New York, New York 10278

Re: Passaic River Six-Mile Study Area and Diamond Alkali Superfund Site

Dear Mr. Karlen:

On behalf of our client, Maxus Energy Corporation, responding on behalf of Occidental Chemical Corporation, we appreciate the Agency's issuance of notice letters in early October to three other parties potentially responsible for the Passaic River Study Area.

Unfortunately, almost simultaneously with the issuance of these notice letters, Chris-Craft finally responded to the Agency's previous notification letter that Chris-Craft will not cooperate with the implementation of the RI/FS, in part because the Agency delayed notifying Chris-Craft until after it had negotiated the Administrative Order on Consent with Maxus. Specifically, Chris-Craft complained that the Passaic River Study Area was not "being managed like other typical multiparty Superfund sites," where the Agency notifies a large number of potentially responsible parties who can then negotiate "among themselves and with EPA." Because of the differences in the Agency's approach, Chris-Craft notes it cannot evaluate whether or not it should cooperate in implementing the RI/FS.

It is ironic that Maxus, on behalf of the most cooperative PRP, raised the same complaint to the Agency as Chris-Craft, the least cooperative PRP. Maxus has been urging the Agency to undertake the systematic and thorough identification and notification of PRPs since we began negotiations that culminated in the issuance of the Administrative Order on Consent. To that end, Maxus has provided assistance to the Agency at many levels and in many forms, from detailed presentations of evidence

bearing on all aspects of a party's liability to opinions from consulting experts, as well as detailed evaluations of 104(e) responses, maps, assistance in reviewing documents at the PVSC, and addresses of witnesses, among other things.

In June of this year, stymied by the lack of progress in this area, we warned the Agency that its failure to bring PRPs into the remedy development process promptly risked the efficient development and implementation of a safe, effective remedy, if any was required. We have explained that both the statute and agency guidance require prompt early PRP notification. Indeed, the Chris-Craft response illustrates all the difficulties of the delayed notification process. Any notified PRP must first be persuaded of its liability, and then go through a lengthy learning process about the Site and the remedial alternatives. A PRP's commitment to remedy implementation also requires an often extended negotiation period. The Agency will not have a group of disciplined PRPs, organized, ready and able to implement a remedy by the time the RI/FS is completed, unless it notifies a substantial number as early in the process as possible.

Therefore, although the additional three notice letters are helpful, the Agency cannot conclude that the group of five noticed PRPs comprises a representative sampling of the universe of parties responsible for the condition of the Passaic River Study Area. The Agency must continue and extend its efforts in prompt PRP identification and notification.

Additionally, in our July meeting, we inquired as to what activity Public Service Electric Company and Gas ("PSE&G") is conducting in and near the Passaic River. The EPA advised that PSE&G is working through New Jersey requirements and oversights. Maxus recently discovered that PSE&G is implementing an interim remedial measure (IRM) to reduce current ongoing unpermitted discharges of hazardous substances from its Harrison Gas Plant into the Study Area. This IRM, administered by the state agency that is supposedly assisting EPA in its management of the Diamond Alkali project, requires PSE&G to prevent the release of materials from the Harrison Plant to the River, and to develop engineering controls that will prevent the future migration of manufactured gas plant related compounds into the Passaic River. Three copies of the work plan for this IRM are enclosed for your distribution.

PSE&G operated not one, but five sites on the Passaic River, some for as long as one hundred years. Maxus first produced evidence of PSE&G's liability to the Agency in September 1993, and reiterated and expanded its showing in May of this year. Maxus again brought the PSE&G sites to EPA's attention at its meeting with EPA in July 1995. As the material Maxus has previously submitted shows, PSE&G admits that its facilities bordering the River are heavily contaminated with a range of hazardous substances found in River sediments, including, but not limited to: arsenic, benzene benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, fluorene, anthracene, pyrene, and phenol. As shown in the Screening Level HERA, these

chemicals pose material risks to human health and to benthic invertebrates. PSE&G admits to discharging process and other wastes directly into the River from at least two of these facilities--from one for more than eighty years. As the Department of Energy studies we have referenced confirm, the processes PSE&G used on these sites generated dioxins. PSE&G admits that its waste stream from one of these facilities is suspected to contain 2,3,7,8-TCDD. The New Jersey Turnpike Authority detected 2,3,7,8-TCDD on property that belonged to PSE&G.

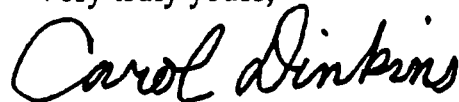
In contrast to these five leaking, contaminated facilities, some of which operated for more than a century, Occidental's predecessor's single facility closed more than twenty years ago, and has been an effectively managed facility under the supervision of EPA for more than ten years. Given the number of PSE&G properties known to be contaminated, and the proven, ongoing releases to the River from these properties, the Passaic River should be treated as an Operable Unit of the PSE&G properties.

To date, EPA has neither notified PSE&G that it is a PRP for the Passaic River Study Area, nor addressed a 104(e) Request to the Company.

EPA should notify PSE&G that it is a PRP for the Passaic River Study Area. As we said earlier this year, Maxus believes that the Agency had the information necessary to notify at least 100 PRPs before the end of September. Even given the Agency's own self imposed restrictions on the quantum of evidence and level of review required, the Agency should notify an additional 8 PRPs before the end of 1995. If EPA believes that it cannot evaluate liability cases, EPA should systematically restructure its processes for PRP identification and notification. As the Chris-Craft letter demonstrates, the consequences of failing to pursue this matter are that the Agency will not have assembled a group of cooperative organized PRPs by the time it selects a remedy.

I regret that we have been unable to reach each other by telephone these past two weeks. I will be travelling next week, but will try to reach you again then.

Very truly yours,



Carol E. Dinkins

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Enclosures